

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 981 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GANI AYUB ANGARIA BHADERA

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR with MR HN JOSHI for Appellant
MR AJ DESAI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 09/09/2003

ORAL JUDGEMENT

1. The appellant was the accused in Sessions Case No.2 of 1994 before the learned Additional Sessions Judge, Jamnagar who, by his judgment and order dated 17th August, 1994, convicted him of the offence under Section 302 of the I.P.C. and sentenced him to life imprisonment and to pay a fine of Rs.100/-, in default, Simple Imprisonment for 7 days. The charge against the accused was that he inflicted two sword blows, one on the head and the other on the leg of Ibrahim Daood and caused his death. The incident allegedly occurred at about 11.15 on 20th October, 1993 near the Rangmill on the Bedi Bandar road near Jamnagar.

2. The prosecution version of the incident is to be found in the evidence of Ayub Osman (p.w.5) who was a witness to the incident. He had a cabin opposite Rangmill where he sold 'Ganthia' and 'Bhajia'. There were also other tea and paan stalls nearby. At the time of the incident, he was at his cabin. At about 11 o'clock, Ibrahim Daood came there and sat on a 'bankhada' opposite his cabin. Ayub ordered tea. After having tea, Ibrahim was reading the newspaper. At that time, the accused Gani Ayub came on a scooter. He stopped the scooter opposite the cabin. He brought out a sword. He approached Ibrahim and inflicted two sword blows on him, one on the head and the other on the leg. Then, he put the sword in the scooter and rode away. Ayub went for some distance and met Ibrahim's brother Hussain who was coming from the opposite direction. He told him about the incident. He told him that the accused had inflicted two sword blows on his brother and run away. Then, they ran back to the cabin. Hussain asked his brother who had given him the blows. While Ibrahim was giving a reply, Ayub went to look for a rickshaw. He brought a rickshaw and Hussain carried Ibrahim in the rickshaw to Irwin Hospital. Ibrahim was admitted in the hospital.

3. Hussain Daood (p.w.3) was the brother of Ibrahim. According to him, the accused was the son of his maternal uncle. He was going from his home to Rangmill for a paan. He met Ayub Osman who was coming from the opposite direction. Ayub Osman told him that Gani Ayub had caused injury to Ibrahim. He, therefore, went to the cabin of Ayub Osman. Ibrahim was lying there and bleeding profusely. He questioned his brother who told him that the accused had given him sword blows on the head and the leg. Just then, his mother Emnaben also came there and Ibrahim told her that the accused had run away with his sword after causing him injury. Thereafter, Hussain and

Ayub Osman took Ibrahim to Irwin Hospital. The police arrived there within 5 to 10 minutes. His complaint (Exh.72) was recorded by the police. According to Hussain, the accused had built a house behind their house and there was a dispute about the ownership of the 'Naveri' between their houses. The said dispute was the motive for the accused to kill his brother.

4. When Ibrahim was brought to Irwin Hospital, Dr. Arvind Namsha (p.w.16) was on duty as C.M.O. He admitted him as an indoor patient. The injuries were noted in the case papers (Exh.47). They were as follows:

- (1) Incised wound in the left skull 7" x 2"
- (2) Incised wound on left knee 6" x 1"

It was noted in the case papers that the victim had been assaulted by a sword.

5. Ibrahim was then admitted to Surgical Ward. Dr. Manharkumar V. Mehta (p.w.17) was Head of Surgical Ward No.3. It was noted in the case papers that there was history of unconsciousness for a few minutes. It was also noted that the patient was semi-conscious, irritable, not oriented and not answering properly. According to Dr. Mehta, treatment was started immediately but as his condition began to deteriorate at about 3 o'clock, he advised that the victim be taken to Rajkot for CAT scanning and for the opinion of a neurosurgeon. Ibrahim was discharged at 6 o'clock in the evening. Before that, X-ray of the head was taken which revealed a fracture on the left side in the temporal and occipital region. At Rajkot, Ibrahim was admitted to the hospital of Dr. Prakashchand Modha (p.w.20). He was a specialist in neurosurgery. According to him, Ibrahim was operated upon after carrying out C.T. scan which showed that the bone had penetrated into the brain. However, Ibrahim did not survive and he died at about 6.50 p.m. on 22nd October, 1993. In cross-examination, he said that the injuries were such as would cause death and only in a rare case, such injury would not result in death.

6. The post-mortem examination was performed by Dr. Jaswantraai Visani (p.w.1). The post-mortem report is at Exh.10. There was a stitched wound on the head and an incised wound on the left leg. The doctor noted the following internal injuries on opening of scalp stitch wound:

- (1) Big Haematoma under scalp clotted blood 300 c.c.

(2) Depressed Fracture of Fronto-parietal bone of skull vertically oblique Size 15 c.m. in length
Fragments of bone removed for drainage or Haematoma

(3) Lacerated wound on Lt. Fronto-parietal Hemisphere Size 13 c.m. vertically oblique
Dura mater - Meninges are Ruptured
Vascular Engenerated
Intra Cerebral Haemorrhage
Clotted blood in Lt. Hemisphere 200 ml.

Death was due to shock due to intra-cerebral haemorrhage on account of head injury. The doctor could not say by what weapon the head injury could have been caused obviously because there was a stitched wound. However, he said that the injury on the leg could have been caused by the muddamal sword which was shown to him.

7. It is also the prosecution case that the sword was discovered from a thicket of babul trees at the instance of the accused. It is true that panch witness Bharat Kubavat (p.w.18) has not supported the prosecution but Bididan Kishandan Charan (p.w.21) who was the Investigating Officer has said that this sword was discovered at the instance of the accused and the panchnama was prepared. According to him, at the time of arrest, the blood-stained bushirt of the accused was also attached. The F.S.L. report (Exh.69) shows that the blood of the same group was found on the sword and the bushirt of the accused as that on the clothes of the deceased.

8. In view of the above evidence, the learned Additional Sessions Judge came to the conclusion that the charge against the accused was proved beyond reasonable doubt.

9. It is clear that the prosecution case rests mainly on the evidence of the eye-witness Ayub Osman. It is contended on behalf of the appellant that he is the only witness and it was brought out in cross-examination that he was a relative of the victim. It is contended that no implicit reliance can be placed on his evidence. It is argued that though he has stated in his oral evidence that the victim made an oral dying declaration in the presence of his mother, he had not said so in his police statement. However, the witness had his stall near the place of incident. He has given his evidence in a natural manner. There is no reason to doubt his

presence at the time of the incident. We find his evidence trustworthy and reliable and his evidence cannot be discarded merely because he happened to be a relative of the victim. His evidence clearly shows that it was the accused who had given two sword blows to the victim.

10. It was contended on behalf of the appellant that, according to medical evidence, the deceased was semi-conscious and not oriented when he was brought to Irwin Hospital and that the medical evidence also shows that the deceased must have become immediately unconscious after receiving the injury. It is, therefore, contended that the deceased could not have made any oral dying declaration before his brother and mother. However, even if the dying declarations were to be excluded from consideration, the evidence of the eye-witness is sufficient to bring home the charge to the accused.

11. It was also contended that Hussain Daood, the brother of the victim, said in his complaint that the accused had come from behind and delivered the blows but when it became apparent in view of the medical evidence that the blows could not have been delivered from behind, he changed his version and stated in his oral evidence that the accused had approached the deceased from front. However, Hussain Daood was not an eye-witness and the evidences of Ayub Osman, who was the eye-witness, cannot be rejected merely because Hussain Daood stated in the complaint that the accused came from behind.

12. Thus, the evidence of the eye-witness coupled with the medical evidence clearly shows that it was the accused who had given two sword blows to the victim and the head injury proved fatal.

13. It was then contended that the meeting between the victim and the accused was accidental without pre-meditation and only one blow was given which, unfortunately, resulted in the death. It was, therefore, submitted that the offence would fall under Section 304 Part I of the I.P.C. However, we are unable to accept this submission. The accused gave two blows. There was no accidental meeting between the accused and the victim. On the contrary, the accused came on a scooter armed with a sword. The injury on the head was intentional and cannot be said to be accidental. The medical evidence also shows that it was sufficient to cause death. The case, therefore, does not fall in any of the Exceptions to Section 300 of the I.P.C. The learned Judge had, therefore, rightly convicted the appellant of the offence

under Section 302 of the I.P.C.

14. In view of the above discussion, there is no substance in the appeal and the same is dismissed.

(N.G. Nandi, J.)

(M.C. Patel, J.)

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